
SENATE BILL No. 256

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-20.5.

Synopsis: Silicosis. Provides that civil actions alleging a silica or mixed dust disease claim may not be maintained unless the plaintiff: (1) makes a prima facie showing that the plaintiff has a physical impairment and that the plaintiff's exposure to silica or mixed dust is a substantial contributing factor to the physical impairment; and (2) establishes technical and other standards for making the prima facie showing. Requires a court to dismiss a silica or mixed dust claim without prejudice if the plaintiff does not make a prima facie showing not later than 120 days after the filing of the claim. Specifies that the statute of limitations does not begin to run until the plaintiff discovers or should have discovered the disease or injury.

Effective: July 1, 2008.

Steele

January 10, 2008, read first time and referred to Committee on Judiciary.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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SENATE BILL No. 256

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-20.5 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2008]:

4 **ARTICLE 20.5. CAUSES OF ACTION: SILICOSIS**

5 **Chapter 1. Application**

6 **Sec. 1. This article applies to every civil action alleging a silica**
7 **or mixed dust disease claim that is filed after June 30, 2008.**

8 **Chapter 2. Definitions**

9 **Sec. 1. The definitions in this chapter apply throughout this**
10 **article.**

11 **Sec. 2. "AMA guides to the evaluation of permanent**
12 **impairment" means the most recent version of the American**
13 **Medical Association's "Guidelines for Assessment of Permanent**
14 **Medical Impairment" at the time of the performance of any**
15 **examination or test required under this article.**

16 **Sec. 3. "Board certified" refers to a medical doctor who is**
17 **currently certified by a medical specialty board approved by the**

2008

IN 256—LS 6615/DI 106+



American Board of Medical Specialties or the American Osteopathic Board of Osteopathic Specialties.

Sec. 4. "Board certified in occupational medicine" refers to a medical doctor who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine.

Sec. 5. "Board certified internist" means a medical doctor who is currently certified by the American Board of Internal Medicine.

Sec. 6. "Board certified oncologist" means a medical doctor who is certified in the subspecialty of medical oncology by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.

Sec. 7. "Board certified pathologist" means a medical doctor who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Internal Medicine.

Sec. 8. "Board certified pulmonary specialist" means a medical doctor who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.

Sec. 9. "Certified B-reader" means a person who has successfully completed the x-ray interpretation course sponsored by the National Institute for Occupational Safety and Health (NIOSH) and passed the B-reader certification examination for x-ray interpretation and whose NIOSH certification is current at the time of any readings required by this chapter.

Sec. 10. "Civil action" means a suit or claim of a civil nature in a court of record. The term does not include any of the following:

- (1) An action relating to any claim for worker's compensation.
- (2) An action alleging any claim or demand made against a trust established under 11 U.S.C. 524(g).
- (3) An action alleging any claim or demand made against a trust established under a plan of reorganization confirmed under the United States Bankruptcy Code.
- (4) An action arising under the Federal Employers Liability Act under 45 U.S.C. 51 et seq.

Sec. 11. "Competent medical authority" means a medical doctor who meets the following requirements:

- (1) The medical doctor is board certified in occupational medicine, a board certified oncologist, a board certified internist, a board certified pathologist, or a board certified pulmonary specialist.

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(2) The medical doctor is actually treating, or has treated, the exposed person and has or had a doctor-patient relationship with the exposed person or, in the case of a board certified pathologist, has personally examined tissue samples of pathological slides of the exposed person.

(3) As the basis for the diagnosis, the medical doctor has not relied, in whole or in part, on any of the following:

(A) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the exposed person's medical condition in violation of any law, regulation, licensing requirement, or medical code of practice with regard to the diagnosis set forth in the report required under IC 34-20.5-3 of the state in which that examination, test, or screening was conducted.

(B) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the exposed person's medical condition outside the context of an existing doctor-patient relationship.

(C) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the exposed person's medical condition that required the exposed person to agree to retain the services of a law firm or lawyer sponsoring the examination, test, or screening.

(4) The medical doctor spends not more than twenty-five percent (25%) of the doctor's annual practice time in providing consulting or expert services in connection with prosecuting or defending actual or potential tort actions, and the medical doctor's medical group, professional corporation, clinic, or other affiliated group earns not more than twenty-five percent (25%) of its revenues from providing these services.

(5) The requirements for determining competent medical authority set forth in subdivisions (2) through (4) may be waived by written agreement of all the parties.

Sec. 12. "Exposed person" means a person whose exposure to silica or mixed dust is the basis for a silicosis claim or mixed dust disease claim.

Sec. 13. "ILO scale" means the system for the classification of chest x-rays set forth in the International Labour Organization's

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1 "Guidelines for the Use of ILO International Classification of
2 Radiographs of Pneumoconioses," 2000 edition or, if amended, the
3 version in effect at the time of the performance of any examination
4 or test on the exposed person required under this article.

5 Sec. 14. "Lung cancer" means a malignant tumor in which the
6 primary site of origin of the cancer is inside the lungs.

7 Sec. 15. "Mixed dust" means a mixture of dusts composed of
8 silica and one (1) or more other fibrogenic dusts capable of
9 inducing pulmonary fibrosis if inhaled in sufficient quantity.

10 Sec. 16. (a) "Mixed dust disease claim" means any claim for
11 damages, losses, indemnification, contribution, or other relief
12 arising out of, based on, or in any way related to inhalation of,
13 exposure to, or contact with mixed dust.

14 (b) The term includes a claim made by or on behalf of any
15 person who has been exposed to mixed dust, or any representative,
16 spouse, parent, child, or other relative of that person, for injury,
17 including mental or emotional injury, death, or loss to the person,
18 risk of disease or other injury, costs of medical monitoring or
19 surveillance, or any other effects on the person's health that are
20 caused by the person's exposure to mixed dust.

21 Sec. 17. (a) "Mixed dust pneumoconiosis" means the lung
22 disease caused by the pulmonary response to inhaled mixed dusts.

23 (b) The term does not mean silicosis and another
24 pneumoconiosis, including asbestosis.

25 Sec. 18. "Nonmalignant condition" means a condition, other
26 than a diagnosed cancer, that is caused or may be caused by either
27 silica or mixed dust, whichever is applicable.

28 Sec. 19. "Pathological evidence of mixed dust pneumoconiosis"
29 means a statement by a board certified pathologist that more than
30 one (1) representative section of lung tissue uninvolved with any
31 other disease process demonstrates a pattern of peribronchiolar
32 and parenchymal stellate (star shaped) nodular scarring and that
33 there is no other more likely explanation for the presence of the
34 fibrosis.

35 Sec. 20. "Pathological evidence of silicosis" means a statement
36 by a board certified pathologist that more than one (1)
37 representative section of lung tissue uninvolved with any other
38 disease process demonstrates a pattern of round silica nodules and
39 birefringent crystals or other demonstration of crystal structures
40 consistent with silica (well organized concentric whorls of collagen
41 surrounded by inflammatory cells) in the lung parenchyma and
42 that there is no other more likely explanation for the presence of

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the fibrosis.

Sec. 21. "Physical impairment" means the condition of an exposed person if one (1) or more of the following apply to the person:

(1) The diagnosis of the person by a competent medical authority, based on the detailed medical history, a medical examination, and pulmonary function testing, is that both of the following apply to the person:

(A) The person has a permanent respiratory impairment rating of at least class 2, as defined by and evaluated under the AMA guides to the evaluation of permanent impairment.

(B) The person has silicosis or mixed dust disease based at a minimum on radiological or pathological evidence of silicosis or radiological or pathological evidence of mixed dust disease.

(2) Radiological or pathological evidence indicates that the person has silicosis or mixed dust disease.

(3) Evidence indicates that the exposed person has substantial occupational exposure to silica or mixed dust.

Sec. 22. "Premises owner" means:

(1) a person who owns, in whole or in part, leases, rents, maintains, or controls privately owned lands, ways, or waters, or any buildings and structures on those lands, ways, or waters; or

(2) a private person, firm, or organization that leases state owned lands, ways, or waters, including any buildings and structures on those lands, ways, or waters.

Sec. 23. "Radiological evidence of mixed dust pneumoconiosis" means an ILO quality chest x-ray read by a certified B-reader as showing bilateral rounded or irregular opacities in the upper lung fields graded at least 1/1 on the ILO scale.

Sec. 24. "Radiological evidence of silicosis" means an ILO quality chest x-ray read by a certified B-reader as showing either bilateral small rounded opacities (p, q, or r) occurring primarily in the upper lung fields graded at least 1/1 on the ILO scale or A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis).

Sec. 25. (a) "Silica" means a respirable crystalline form of the naturally occurring mineral form of silicon dioxide.

(b) The term includes, but is not limited to, quartz, cristobalite, and tridymite.

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1 **Sec. 26. (a) "Silica claim" means any claim for damages, losses,**
 2 **indemnification, contribution, or other relief arising out of, based**
 3 **on, or in any way related to inhalation of, exposure to, or contact**
 4 **with silica.**

5 **(b) The term includes a claim made by or on behalf of any**
 6 **person who has been exposed to silica, or any representative,**
 7 **spouse, parent, child, or other relative of that person, for injury,**
 8 **including mental or emotional injury, death, or loss to the person,**
 9 **risk of disease or other injury, costs of medical monitoring or**
 10 **surveillance, or any other effects on the person's health that are**
 11 **caused by the person's exposure to silica.**

12 **Sec. 27. "Silicosis" means a lung disease caused by the**
 13 **pulmonary response to inhaled silica.**

14 **Sec. 28. "Substantial contributing factor" means both of the**
 15 **following:**

16 **(1) Exposure to silica or mixed dust is the predominate cause**
 17 **of the physical impairment alleged in the silica claim or mixed**
 18 **dust disease claim, whichever is applicable.**

19 **(2) A competent medical authority has determined with a**
 20 **reasonable degree of medical certainty that without the silica**
 21 **or mixed dust exposures the physical impairment of the**
 22 **exposed person would not have occurred.**

23 **Sec. 29. "Substantial occupational exposure to mixed dust"**
 24 **means employment for a cumulative period of at least five (5) years**
 25 **in an industry and an occupation in which, for a substantial**
 26 **portion of a normal work year for that occupation, the exposed**
 27 **person did any of the following:**

28 **(1) Handled mixed dust.**

29 **(2) Fabricated products containing mixed dust so that the**
 30 **person was exposed to mixed dust in the fabrication process.**

31 **(3) Altered, repaired, or otherwise worked with products**
 32 **containing mixed dust in a manner that exposed the person to**
 33 **mixed dust on a regular basis.**

34 **(4) Worked in close proximity to other workers who**
 35 **experienced substantial occupational exposure to silica in a**
 36 **manner that exposed the person to mixed dust on a regular**
 37 **basis.**

38 **Sec. 30. "Substantial occupational exposure to silica" means**
 39 **employment for a cumulative period of at least five (5) years in an**
 40 **industry and an occupation in which, for a substantial portion of**
 41 **a normal work year for that occupation, the exposed person did**
 42 **any of the following:**

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(1) Handled silica.

(2) Fabricated products containing silica so that the person was exposed to silica in the fabrication process.

(3) Altered, repaired, or otherwise worked with a product containing silica in a manner that exposed the person to silica on a regular basis.

(4) Worked in close proximity to workers who experienced substantial occupational exposure to mixed dust in a manner that exposed the person to silica on a regular basis.

Sec. 31. "Veterans' benefit program" means any program for benefits in connection with military service under Title 38 of the United States Code.

Sec. 32. "Worker's compensation law" refers to IC 22-3 and judicial decisions construing IC 22-3.

Chapter 3. Prima Facie Showing

Sec. 1. A person may not bring or maintain a civil action alleging a silica or mixed dust disease claim based on a nonmalignant condition in the absence of a prima facie showing that, in the opinion of a competent medical authority, the exposed person has a physical impairment, and that the person's exposure to silica or mixed dust is a substantial contributing factor to the physical impairment. The prima facie showing must include the following:

(1) Evidence that a competent medical authority has taken from the exposed person a detailed medical history, which includes, to the extent necessary to render the opinion referred to in this section, the occupational and exposure history of the exposed person. If the exposed person is deceased, the occupational and exposure history of the exposed person shall be taken from the person or persons who are most knowledgeable about these areas of the exposed person's life.

(2) Evidence verifying that there has been a sufficient latency period in the context of the chronic, accelerated, or acute forms of the silicosis or mixed dust disease.

(3) A diagnosis by a competent medical authority, based on the detailed medical history, a medical examination, and pulmonary function testing, that both of the following apply to the exposed person:

(A) The exposed person has a permanent respiratory impairment rating of at least class 2, as defined by and evaluated under the AMA guides to the evaluation of

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permanent impairment.

(B) The exposed person has silicosis or mixed dust disease based at a minimum on radiological or pathological evidence of silicosis or radiological or pathological evidence of mixed dust disease.

(4) Verification that the competent medical authority has concluded that exposure to silica or mixed dust was a substantial contributing factor to the exposed person's impairment. A diagnosis that states that the medical findings and impairment are consistent with or compatible with silica or mixed dust exposure does not meet the requirements of this subdivision.

Sec. 2. A person may not bring or maintain a civil action alleging that silica or mixed dust caused the person to contract lung cancer in the absence of a prima facie showing that, in the opinion of a competent medical authority, the person has a primary lung cancer, and that the person's exposure to silica or mixed dust is a substantial contributing factor to the lung cancer. The prima facie showing must include the following:

(1) Evidence that a competent medical authority has taken from the exposed person a detailed medical history, which includes, to the extent necessary to render the opinion referred to in this section, the occupational and exposure history of the exposed person. If the exposed person is deceased, the occupational and exposure history of the exposed person shall be taken from the person or persons who are most knowledgeable about these areas of the exposed person's life.

(2) Evidence sufficient to demonstrate that at least ten (10) years have elapsed from the date of the exposed person's first exposure to silica or mixed dust until the date of diagnosis of the exposed person's primary lung cancer.

(3) Radiological or pathological evidence of silicosis or radiological or pathological evidence of mixed dust disease.

(4) Evidence of the exposed person's substantial occupational exposure to silica or mixed dust.

(5) Verification that the competent medical authority has concluded that exposure to silica or mixed dust was a substantial contributing factor to the exposed person's lung cancer. A diagnosis that states that the cancer is consistent with or compatible with silica or mixed dust exposure does not meet the requirements of this subdivision.

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1 **Sec. 3. A person may not bring or maintain a civil action**
 2 **alleging a silica or mixed dust disease claim based on the wrongful**
 3 **death of an exposed person in the absence of a prima facie showing**
 4 **that, in the opinion of a competent medical authority, the death of**
 5 **the exposed person was the result of a physical impairment and**
 6 **that the person's exposure to silica or mixed dust was a substantial**
 7 **contributing factor to the physical impairment causing the person's**
 8 **death. The prima facie showing must include the following:**

9 **(1) Evidence that a competent medical authority has taken**
 10 **from the exposed person a detailed medical history, which**
 11 **includes, to the extent necessary to render the opinion**
 12 **referred to in this section, the occupational and exposure**
 13 **history of the exposed person. If the exposed person is**
 14 **deceased, the occupational and exposure history of the**
 15 **exposed person shall be taken from the person or persons who**
 16 **are most knowledgeable about these areas of the exposed**
 17 **person's life.**

18 **(2) Evidence sufficient to demonstrate that at least ten (10)**
 19 **years have elapsed from the date of the exposed person's first**
 20 **exposure to silica or mixed dust until the date of diagnosis of**
 21 **the exposed person's primary lung cancer or, if the death is**
 22 **not alleged to be cancer related, evidence verifying that there**
 23 **has been a sufficient latency period in the context of the**
 24 **chronic, accelerated, or acute forms of the silicosis or mixed**
 25 **dust disease.**

26 **(3) Radiological or pathological evidence of silicosis or**
 27 **radiological or pathological evidence of mixed dust disease.**

28 **(4) Evidence of the exposed person's substantial occupational**
 29 **exposure to silica or mixed dust.**

30 **(5) Verification that the competent medical authority has**
 31 **concluded that exposure to silica or mixed dust was a**
 32 **substantial contributing factor to the exposed person's death.**
 33 **A diagnosis that states that the medical findings, impairment,**
 34 **or lung cancer are consistent with or compatible with silica or**
 35 **mixed dust exposure does not meet the requirements of this**
 36 **subdivision.**

37 **Sec. 4. Evidence relating to any physical impairment under this**
 38 **article, including pulmonary function testing and diffusing studies,**
 39 **must comply with the technical recommendations for**
 40 **examinations, testing procedures, quality assurance, quality**
 41 **control, and equipment incorporated in the AMA guides to the**
 42 **evaluation of permanent impairment and the official statements of**

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the American Thoracic Society regarding lung function testing, including general considerations for lung function testing, standardization of spirometry, standardization of the measurement of lung volumes, standardization of the single-breath determination of carbon monoxide uptake in the lung, and interpretative strategies for lung testing in effect at the time of the performance of any examination or test on the exposed person required under this article.

Sec. 5. In determining whether exposure to a silica or mixed dust was a substantial contributing factor in causing the plaintiff's injury or loss, the trier of fact in the action shall consider all of the following:

- (1) The manner in which the plaintiff was exposed.
- (2) The proximity of silica or mixed dust to the plaintiff when the exposure occurred.
- (3) The frequency and length of the plaintiff's exposure.
- (4) Any factors that mitigated or enhanced the plaintiff's exposure to silica or mixed dust.

Sec. 6. This article shall not be interpreted as authorizing the exhumation of a body.

Chapter 4. Time Periods, Jurisdiction, and Dismissal

Sec. 1. (a) A plaintiff in any civil action who alleges a silica claim or a mixed dust disease claim, not more than one hundred and twenty (120) days after filing the complaint, must file a written report by a competent medical authority, and any supporting evidence, making out the applicable prima facie case described in IC 34-20.5-3.

(b) A defendant has one hundred twenty (120) days from the filing of the plaintiff's proffered prima facie evidence to challenge the adequacy of the proffered prima facie evidence for failure to comply with the minimum applicable requirements specified in IC 34-20.5-3.

Sec. 2. (a) If the court finds that no genuine issue of material fact exists with respect to a plaintiff's failure to make out a prima facie case as described in IC 34-20.5-3, the court shall dismiss the plaintiff's claim without prejudice as a matter of law.

(b) The court shall maintain its jurisdiction over any case dismissed without prejudice under this section. A plaintiff whose case has been dismissed without prejudice under subsection (a) may move at any time to reinstate the plaintiff's case by making a renewed prima facie showing that meets the minimum requirements specified in IC 34-20.5-3.

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1 **Sec. 3. (a) The court's findings and decision on the prima facie**
 2 **showing:**

3 **(1) do not result in any presumption at trial that the exposed**
 4 **person has a physical impairment that is caused by silica or**
 5 **mixed dust exposure;**

6 **(2) are not conclusive as to the liability of any defendant in the**
 7 **case; and**

8 **(3) are not admissible at trial.**

9 **(b) If the case is tried to a jury:**

10 **(1) the court may not instruct the jury with respect to the**
 11 **court's findings or decision on the prima facie showing; and**

12 **(2) neither counsel for any party nor a witness may inform the**
 13 **jurors or potential jurors of the prima facie showing.**

14 **Chapter 5. Statute of Limitations**

15 **Sec. 1. Notwithstanding any other provision of law, with respect**
 16 **to any silica claim or mixed dust disease claim that is not barred as**
 17 **of July 1, 2008, the period of limitations does not begin to run until**
 18 **the exposed person discovers, or through the exercise of reasonable**
 19 **diligence should have discovered, that the person has a physical**
 20 **impairment resulting from silica or mixed dust exposure.**

21 **Sec. 2. (a) Except as provided in subsection (b), a court may**
 22 **consolidate for trial any number and type of silica or mixed dust**
 23 **disease claims only with the consent of all parties.**

24 **(b) In the absence of the consent described in subsection (a), a**
 25 **court may consolidate for trial any claims relating to the exposed**
 26 **person and members of the person's household.**

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